



FISH & NEAVE

Herbert F. Schwartz
Eric C. Woglom
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Denise L. Loring
Jeffrey H. Ingberman
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Duane
Mark I
Edward
Eric R
Kelsey L. ...
William J. McCabe
Marta E. Gross
John M. Hintz
Richard A. Inz
Frances M. Lynch
Christopher J. Harnett
A. Joy Arnold

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Robert W. Morris
Avinash S. Lele*
Jane T. Gunnison
Richard L. Rainey****
James E. Hopentfeld**
Pablo D. Hendler
Brian C. Cannon**

A. Peter Adler
Thomas J. Vetter
Charles Quinn
Lisa E. Cristal
Gabrielle E. Higgins*

Frederick P. Fish 1855-1930
Charles Neave 1867-1937

* California and New York Bars ** California Bar Only *** Delaware Bar Only **** DC Bar Only

MARTIN A. LEROY

DIRECT DIAL 212.596.9127

DIRECT FAX 646.728.2618

E-MAIL MLEROY@FISHNEAVE.COM

February 10, 2003

VIA FACSIMILE (CONF. BY FEDERAL EXPRESS)

Albert Zervas, Esq.
Trademark Trial and Appeal Board
South Tower Building
2900 Crystal Drive
Arlington, VA 22202

Re: *Galleon S.A. v. Havana Club Holding, S.A.*
TTAB Cancellation No. 24,108

Dear Mr. Zervas:

This is in response to the letter to you from William R. Golden, Jr., counsel for petitioners, dated February 7, 2003, in which Mr. Golden argues that respondent Empresa Cubana Exportadora de Alimentos y Productos Varios, S.A. ("Cubaexport") should not be granted any additional time to respond to petitioner's summary judgment motion in the above-referenced cancellation proceeding.

By order of the Trademark Trial and Appeal Board, dated January 21, 2003, Cubaexport was joined as respondent in the cancellation proceeding. Cubaexport was not a party to the proceeding prior to January 21, was not represented by counsel in connection with this proceeding, and had no reason to be so represented prior to January 21. Subsequent to the Board's Order, Fish & Neave was asked by Cubaexport to represent it as counsel in this proceeding. Fish & Neave immediately applied to OFAC for a specific license pursuant to the

1251 AVENUE OF THE AMERICAS, NEW YORK, NY 10020 TEL 212.596.9000 FAX 212.596.9090

525 UNIVERSITY AVENUE, PALO ALTO, CA 94301 TEL 650.617.4000 FAX 650.617.4090

1825 I STREET, NW, SUITE 400, WASHINGTON DC 20006 TEL 202.857.5222 FAX 202.857.5237

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Cuban Assets Control Regulations to (i) defend Cubaexport in the cancellation proceeding, (ii) solicit and receive fee payments and reimbursements for expenses incurred in connection with Fish & Neave's legal representation of Cubaexport, and (iii) travel to Cuba to meet with Cubaexport in connection with such representation.

Fish & Neave is not in a position to represent Cubaexport in this matter absent the requested OFAC license. Without the specific OFAC license Fish & Neave has sought, this firm cannot be paid for services performed for Cubaexport in connection with this proceeding (see *American Airways Charter v. Reagan*, 746 F.2d 865, 872 (D.C. Cir. 1984)) ("no fee can be paid counsel absent a separate, and express, authorization from OFAC") or travel to Cuba to meet with Cubaexport.¹

Mr. Golden also incorrectly asserts that Mr. Krinsky of Rabinowitz, Boudin, Standard, Krinsky and Lieberman was identified in the Board's January 21, 2003 Order as Cubaexport's "counsel of record" in this proceeding and that Fish & Neave must (i) take action to be "formally substituted as counsel of record," and (ii) serve a notice of appearance on behalf of Cubaexport. Mr. Golden, however, confuses the concepts of domestic representative with legal counsel in the proceeding. The Board identified Mr. Krinsky as Cubaexport's domestic representative upon whom service of notices or process for this proceeding may be made (see pages 7 and 19 of the Board's January 21, 2003 Order). Mr. Krinsky has not served as Cubaexport's counsel in this proceeding and has not been requested to do so. Therefore, no "substitution" of counsel is possible as Cubaexport has not been represented by any other counsel in this proceeding. Furthermore, there is no requirement that Fish & Neave serve "a notice of appearance" on behalf of Cubaexport in this proceeding.²

Mr. Golden also says that Cubaexport has had more than ample time to prepare any response to the petitioners' summary judgment papers. Mr. Golden, however, ignores the fact that Cubaexport has only been a party to this proceeding since January 21, 2003 and that, prior to January 21, had no reason or obligation to retain and pay counsel to defend it in this

¹ Mr. Golden does not dispute that Cubaexport cannot pay Fish & Neave without the specific license Fish & Neave has sought. Moreover, Mr. Golden is incorrect when he says that Fish & Neave lawyers could travel to Cuba as "fully-hosted" travelers pursuant to 31 C.F.R. § 515.420. That section does not apply because Fish & Neave would be providing a service to a Cuban national in connection with the travel. 31 C.F.R. §§ 515.420(a)(1) and (c).

² On February 7, Fish & Neave provided to Mr. Krinsky a copy of our February 5 letter to you.

FISH & NEAVE

Albert Zervas, Esq.

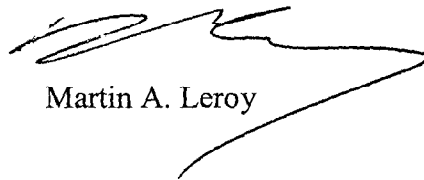
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proceeding. Now that Cubaexport has been joined in the proceeding and has requested Fish & Neave's representation, Fish & Neave requires additional time to become familiar with the extensive history and legal issues in this matter, to meet with our client and to coordinate efforts with counsel for HCH.

Petitioners have not provided a legitimate reason as to why our request for an extension of time in which to respond to petitioners' summary judgment motion should be denied.

Sincerely yours,



Martin A. Leroy

MAL:afg

cc: William Golden, Esq. (Counsel for petitioners) (via facsimile)
Charles Sims, Esq. (Counsel for respondent) (via facsimile)
Michael Krinsky, Esq. (via facsimile)